

# Home Inspector Lessons in Risk Management

## *What to do when a claim comes in*

BY ROBERT W. PEARSON

**ANYONE IN BUSINESS IS EXPOSED TO** risk every day. In fact, just getting in your vehicle to drive to an inspection exposes you to risk, which is the reason car insurance is mandatory in nearly every state. If you do any number of home inspections, at some point someone will accuse you of negligence. Usually this arrives via a cordial phone call asking you to look at something, or it could arrive as a first notice when the process server knocks on your door. If the latter happens, call your insurance company immediately – do not think ignoring a summons will make the claim go away.

This article discusses what to do when a call or email comes in about an inspection you performed. Hopefully, you already know to use a written contract for the inspection and get it signed by all clients every time. The contract should include the standard you inspect to (state codified or association), limitations and exclusions, time limit for claim, limit of liability (if allowed in your state) and an alternative dispute resolution clause. This article assumes the existence of a signed written contract.

Prior to the receipt of any claim, be sure you understand your E&O insurance provider reporting requirements. Call your agent and ask him or her if you do not understand. Most times you can report an incident, such as a call from a client, and that stays on your agent's desk – it is not a claim. This covers

you in the event the issue is unresolved and you are presented a claim (usually the trigger for a claim is a complaint in writing and/or a monetary demand) that requires reporting to your carrier. Most carriers have a standard claim reporting form you can use. An incident usually requires a phone call to your agent.

When a client calls or emails and has a concern about an item not being in the report, never admit guilt – we see a lot of emails where the inspector says, “I must have missed that” in writing. Doing this significantly reduces the ability to defend your claim. Similarly, don't get defensive on the call, as this will decrease the likelihood of a resolution favorable to you. Ask what the issue involves and tell the client you need to review the report and you will call them back as soon as possible. Make sure you do call them back! If the issue is not resolved on the phone, ask to meet them at the house to view the claimed omission or issue. You should bring your report, a copy of the standards of practice you used for the inspection, and any photographs you have of the issue. You do not need to share these with the client unless they help your defense. Be sure to take new photos of the issue at the call-back inspection. If possible, have another home inspection expert with you, particularly if a significant issue is alleged – this might be the only chance you get to look at it. The cost of this expert may be covered by your insurance if you submit a claim. Discuss the issue

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and let the client know you will get back to them shortly if you are unable to resolve at the site. Sometimes the item is in your report and the client did not read or understand it or the issue is out of the scope of the home inspection. Be prepared to show the client where in your report you noted the item and any recommended action. You should also be prepared to show the client where in your contract and report you notified them that the issue was outside of the scope of the inspection and back this up with reference to the applicable standards of practice. Remember, a professional and courteous response is much more likely to resolve a dispute than a combative or defensive response.

If, after reviewing the issue, your photographs, and your report, you believe you did miss something, you need to determine what the cost will be to resolve the issue. In California we are not allowed to contractually limit our liability to the inspection fee paid per B&P 7198, similar to several other states; however, this means we are allowed to settle with a client for any amount agreed upon. A good first question is: Can it be resolved by refunding the inspection fee? If so, make that offer accompanied by an unconditional release (your provider will usually have these for your use) informing the client you are happy to refund the fee in exchange for a complete release of further liability. In California any release should include an express waiver of Civil Code § 1542; other states may have similar laws that might require waiving in a release, consult a local attorney for more information. Include a copy of the check you will send them upon receipt of the executed release. Once the signed release is received, send them the check. You are done. With an executed unconditional release, your client is gone forever. Sometimes resolving the issue may require more than the inspection fee returned to mollify the client. In that case, you may want to consider settling the matter for an amount less than or up to the amount of your insurance policy deductible. Many inspectors will alert their insurance company regarding the complaint incident and settle for an amount less than their deductible with consent of their insurance provider. Remember

that if you submit a claim to your insurance company, you are going to be responsible for the deductible anyway, so any settlement for less than the deductible is money you save. Again, always obtain a signed release in exchange for any settlement.

**Bottom line, the most important behavior is to respond immediately and cordially to an inquiry or complaint and handle it. Many questions become a claim because the client feels ignored due to lack of response or follow through from the inspector.**

If you receive a letter from a client's attorney regarding alleged omissions in the report, you should alert your insurance company regarding the incident regardless of monetary demand included or not. The carrier will most likely recommend an attorney to respond. If you do not have insurance and receive an attorney claim letter, it is best to hire an attorney to respond. Similarly, if your attempts at an informal resolution are unsuccessful, alert your insurance company. The sooner your insurance company knows about a claim, the sooner they can start protecting you and working on a successful resolution. If your insurance company does appoint counsel for you, work with that counsel to provide the information and documents necessary for your defense. Your cooperation will make a successful resolution more likely.

Bottom line, the most important behavior is to respond immediately and cordially to an inquiry or complaint and handle it. Many

questions become a claim because the client feels ignored due to lack of response or follow through from the inspector, or is angered by the inspector's attitude and/or response. We know dealing with complaints is a blow to the ego and unpleasant. However, resolving the issue quickly is usually the best way to prevent heartburn later on. Remember, you are a professional, and your response to complaints should demonstrate the same professionalism that you exhibit doing an inspection. ■

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